

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

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ORDER

Dr. Yogesh Sharma

VS

State of Rajasthan & Ors.

**S.B. CIVL WRIT PETIITON
NO.6682/2003 UNDER ARTICLE
226 OF THE CONSTITUTION OF
INDIA.**

DATE OF ORDER : 23rd August, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Harish Purohit, Advocate, for the petitioners.
Mr.Rameshwar Dave, Dy. Government Advocate, for the
respondents.

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BY THE COURT: -

The present petition has been filed by Dr. Yogesh

Sharma who was initially appointed in the services of the respondents as Asstt. Civil Surgeon by order dated 24.10.1985 on temporary basis in the pay scale of Rs.1000-1860. Subsequently however he on the recommendations of Rajasthan Public Service Commission, Ajmer (in short R.P.S.C) was regularly appointed on the post of Asst. Civil Surgeon vide order dated 25.10.1986. While working as Asstt. Civil Surgeon, the petitioner applied for recruitment to the post of Senior Demonstrator (Forensic Medicines) under the Rajasthan Medical (Collegiate Branch) Rules, 1962 (in short the Rules of 1962). Upon being selected, he was appointed as Senior Demonstrator (Forensic Medicines) by order dated 4.4.1988 and was posted at R.N.T. Medical College, Udaipur. While in service, the petitioner successfully completed post graduate studies and obtained degree of M.D. (Forensic Medicines). The respondents by their order dated 6.1.1998, promoted the petitioner on temporary basis subject to review and revision to the post of lecturer on the recommendations of the Departmental Promotion Committee (in short D.P.C.) as provided under Rule 24(3) of the Rules of 1962. Subsequently however vide order dated 24.3.2000 again on the recommendations

of D.P.C., the petitioner was promoted and appointed as Asstt Professor (Forensic Medicines) purely on temporary basis subject to review and revision by the next D.P.C. According to the petitioner though the promotion on the post of lecturer was made by order dated 6.1.1998 subject to review and revision by subsequent recommendations of D.P.C. therefore he should be taken on regular basis w.e.f. 7.1.1998. He filed a writ petition before this Court being S.B. Civil Writ Petition No.2787/2003 with the prayer that respondents be directed to promote him on the post of Asstt. Professor against the vacancies occurring as a consequence of promotion of other Asstt. Professors on the post of Associate Professor, which remained undecided. Subsequently however the respondents promoted the petitioner vide order dated 6.9.2003 on the post of Asstt. Professor in the subject of Forensic Medicines under the recommendations of D.P.C. pertaining to the year 2003-04. He thereupon made representation to the respondents on 9.10.2003 with the request that his appointment on the post of Asstt. Professor should be treated against the vacancies of the year 1998 and, thereafter his case should be considered for the purpose of promotion to the post of

Associate Professor as he had by now already completed services of five years and eight months. When his demand was not accepted, the petitioner filed the present writ petition with the prayer that the order dated 6.9.2003 may be modified suitably by directing the respondents to allot him vacancy of the year 1997-98 to the petitioner pertaining to the post of Asstt. Professor (Forensic Medicines) and consider his case for promotion against the post of Associate Professor (Forensic Medicines) against the vacancies pertaining to the year 2003-04.

The case of the respondents is that there were in all eight vacant posts of Asstt. Professor in Forensic Medicine, out of which four posts were to be filled in by D.P.C., two posts were to be filled in by R.P.S.C. by way of direct recruitment and remaining two posts were lien vacancy due to suspension of Dr. B.M. Gupta and Dr. D.K. Sharma. The D.P.C. was held for promotion on the four clear posts, by seniority-cum-merit basis and Dr.B.C. Temani, Dr. P.N. Mathur and Dr. Vivek Anand were found suitable for promotion. However, on account of pending disciplinary inquiry under Rule 16 of the Rajasthan Civil Services

(C.C.A.) Rules, 1958 (in short C.C.A Rules) against Dr. S.R. Kochar, forth post was kept in sealed cover. The name of the petitioner figured at S.No.7 in the eligibility list therefore he could not be considered to promotion. Dr. P.C. Vyas who was at S.No.5 and the petitioner who was at S.No.7 were considered for promotion to the post of Asstt. Professor purely on temporary basis on the post which remained vacant due to lien vacancies. Since Dr. Sheetal Jain was facing disciplinary inquiry, at the relevant time, two lien vacancies which could not be filled in on regular basis were sought to be filled in by promoting Dr. P.C. Jain and the petitioner on temporary basis. The name of the petitioner could be considered who was at S.No.7 in the eligibility list only because candidate at S.No.6 in the said list, namely, Dr. Sheetal Jain was facing departmental inquiry. The case of the respondents is that the regular turn of the petitioner for promotion became ripe only against the vacancies of the year 2003-04 and accordingly on recommendations of D.P.C., he was promoted against the vacancies of the year 2003-04.

I have heard Shri Harish Purohit, learned counsel for

the petitioner and Shri Rameshwar Dave, Dy. Government Advocate, for the respondents and perused the record.

The promotion of the petitioner was made against the lien vacancy, which became available on account of suspension of Dr. B.M. Gupta and Dr. D.K. Sharma and therefore, the recommendations quo them were kept in sealed cover. These two lien vacancies were proposed to be filled in by making temporary promotions. The subsequent two candidates respectively at S.No.5 Dr. P.C.Jain and at S.No.6 Dr. Sheetal Jain in the eligibility list were due to be considered for such temporary promotion. However, Dr. Sheetal Jain was also at that time facing certain disciplinary inquiry. It was therefore next choice fell up on the petitioner who figured at S.No.7. The promotion of the petitioner vide order dated 6.1.1998 was purely temporary basis under Rule 34(iii) of the Rules of 1962 subject to review and revision. On recommendations of subsequent D.P.C. however, the petitioner was again promoted on the post of Asstt. Professor on adhoc temporary basis again subject to review and revision vide order dated 24th March, 2000. When the persons who were facing disciplinary

proceedings were cleared of such clouds, their promotions were made on regular basis. The case of the petitioner became ripe for promotion against the vacancies of the year 2003-04. He on the recommendations of D.P.C. was promoted on the post of Asstt. Professor vide order dated 6th Sept., 2003. Merely because the petitioner was appointed on adhoc basis subject to review and revision against a lien vacancy, which ultimately was occupied by the person senior to him, his promotion made purely on ad hoc basis for the vacancies of 1978-79 cannot be treated as having been made on regular basis. The right of the petitioner for promotion on regular basis became due against the vacancies of the year 2003-04 and eventually he was promoted against the vacancies of that year by order dated 6.9.2003. Neither the date of regular promotion of the petitioner nor the year of his allotment can be preponed to the detriment of those who were senior to him. No direction can therefore be issued requiring respondents to consider the case of the petitioner for promotion on a still higher post of Associate Professor against the vacancies of the year 2003-04 because it not only would be contrary to the rule requiring experience of five years on the post of

Asstt. Professor so as to be eligible for consideration of promotion but also would adversely effect the right of many of his seniors. For all these reasons, I do not find any merit in the present writ petition.

In view of the above discussion, the writ petition is dismissed being devoid of any merit. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-